

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0127P

Gross and Adjusted Gross Income Tax

Fiscal Year ended 03/31/98

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer protested liability 98-0066576 that was issued on August 1, 2001 and generated due to filing the return late. Taxpayer states that it was audited and the assessment was reduced, therefore no penalty should be assessed.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed on its late filed fiscal year 1998 tax return because an audit reduced the assessment. Taxpayer filed its 1998 return late which was due on July 15, 1998. The payment date was December 15 1998, which is clearly late. An audit was conducted later that reduced the assessment.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to remit approximately thirty-five percent (35%) of its tax for fiscal year 1998, timely. A subsequent audit reduced the assessment; however, the reduction does not affect the filing of the tax return.

FINDING

Taxpayer's protest is denied.

DW/RAW/JMS/dw 022103